

EXPLANATORY MEMORANDUM TO THE CHILDREN (PERFORMANCE AND ACTIVITIES) (WALES) REGULATIONS 2015

This Explanatory Memorandum has been prepared by the Education and Public Services Group of the Welsh Government and is laid before the National Assembly for Wales in conjunction with the above subordinate legislation and in accordance with Standing Order 27.1.

MINISTER'S DECLARATION

In my view, this Explanatory Memorandum gives a fair and reasonable view of the expected impact of the Children (Performance and Activities) (Wales) Regulations 2015. I am satisfied that the benefits outweigh any costs.

Huw Lewis AM

Minister for Education and Skills

7 October 2015

1. DESCRIPTION

These Regulations set out the details of the regulatory regime which applies to children taking part in:

- public performances, paid sport and modelling (activities) in Great Britain, for which a licence must be obtained from a local authority in Wales;
- certain public performances in Wales that are exempt from the requirement to obtain such a licence; and
- performances and activities for profit taking place abroad pursuant to a licence granted by a magistrate in Wales.

2. MATTERS OF SPECIAL INTEREST TO THE CONSTITUTIONAL AND LEGISLATIVE AFFAIRS COMMITTEE

None

3. LEGISLATIVE BACKGROUND

The Welsh Ministers make these Regulations in exercise of the powers conferred on the Secretary of State by sections 25(2) and 25(8) of the Children and Young Persons Act 1933 and sections 37(3), 37(4), 37(5), 37(6), 39(3) and 39(5) of the Children and Young Persons Act 1963, and now vested in them.

The functions of the Secretary of State so far as exercisable in relation to Wales transferred to the National Assembly for Wales under the National Assembly for Wales (Transfer of Functions) Order 1999. The functions of the National Assembly for Wales were then vested in Welsh Ministers by virtue of paragraph 30 of Schedule 11 to the Government of Wales Act 2006 (c.32).

These Regulations are made using the Assembly's negative resolution procedure.

4. PURPOSE AND INTENDED EFFECT OF THE LEGISLATION

The current legislative framework requires people who plan to put on a performance involving children, or to engage them in paid sporting or modelling activities, to make arrangements for their safety and well-being. The law requires the producer to apply for a licence from the child's local authority or where the child is not from Great Britain, the local authority in whose area the applicant resides or has his or her place of business. There are certain exemptions that may be available in respect of performances in Wales. The local authority should only issue a licence if they are satisfied that the producer has made suitable and sufficient arrangements to safeguard the child and that the child's education will not suffer. There are also a number of requirements and rules, set out in the current regulations, which producers and local authorities must follow. In addition, there are separate

requirements in respect of taking a child abroad to take part in a performance or activity for profit, for which a licence must be obtained from a magistrate.

The current legal framework has generally proved effective in its purpose of ensuring that child performers are kept safe. Most of it has, however, been in place since the 1960s and the basic framework in respect of performances abroad has been in place since the 1930s. Some aspects are now outdated and do not always work in the best interests of the child. The Children (Performances and Activities) (Wales) Regulations 2015 lift the unnecessary restrictions on when children can take part in certain types of performance and activities, whilst keeping essential safeguards in place.

The main changes are to:

- remove the requirement for a medical certificate to be provided before a child performance licence can be issued;
- lift unnecessary restrictions on the different types of performance a child can take part in on one day;
- remove unhelpful differences between the rules for performances which are not recorded or broadcast and those which are, and
- update the wording of the Regulations using modern language and a clearer structure, to make the provisions easier to read and follow.

The intended impact is to simplify the Regulations to maximise the opportunities available to child performers without removing any of the safeguarding arrangements which ensure the well-being of the child and their education.

These Regulations will make it easier for business, charities and voluntary bodies to understand the requirements they must have in place to safeguard child performers.

It is well understood that children experience many benefits from participating in performances and activities (paid sport or modelling) and the Welsh Government holds the position that children should be encouraged to take up these opportunities and enjoy the chance to perform in public.

Whilst ensuring maximum opportunity for children to take part in performances, paid sporting or modelling activities, effective safeguarding of these children is paramount. All local authorities have a legal duty to have regard to the need to safeguard and promote the welfare of children.

5. CONSULTATION

Details of consultation undertaken are included in section 7 within the RIA below.

PART 2: REGULATORY IMPACT ASSESSMENT

6. OPTIONS

Option 1: Do nothing.

Keeping the current Regulations would not meet our intended effect to simplify the regulations to maximise the opportunities available to child performers without removing any of the safeguarding arrangements which ensure the well-being of the child and their education. They would also put applicants and the licensing authorities in Wales at a commercial disadvantage by subjecting them to less flexible rules on licences and applicants in comparison to England (such as earlier finish times for younger children), and applicants would continue to face the expense of the cost of a medical certificate for each child and every application. This could lead to organisers preferring to use children from England and so may reduce the chances of children in Wales taking part in these events. We have not been aware of this happening since new Regulations were introduced in England in February 2015, but the sector does not appear to have changed its behaviour in expectation of an early change of Regulations by the Welsh Government.

Option 2: Do minimum possible

Produce new guidance on the existing Regulations. This could improve understanding of the rules but would not meet our objective of simplifying the process.

Option 3: Revising subordinate legislation

Revising the Regulations would enable us to work with the sector to create modern and more flexible rules for licences and bring them in line with England, so as to ensure that children in Wales are not at a disadvantage.

Following consultations (see below), it was decided to proceed with option 3, making new Regulations for Wales, as there were plans for separate Regulations for England only.

7. COSTS & BENEFITS

Option 1. Do nothing.

Costs

No direct or indirect costs to the Welsh Government. There would be continued direct costs to applicants in Wales in providing medical certificates, which cost between £30 and £63 for each child, and to local authorities in time spent considering these.

Benefits

There would be no benefits from this option.

Option 2. Do minimum – new guidance

Costs

This option would incur direct costs to the Welsh Government in drafting and consulting on new guidance. It would also incur continuing costs to applicants in providing medical certificates and to local authorities in considering them, plus reputational cost to the Welsh Government in not having updated the Regulations, as above.

Benefits

New updated guidance would aid local authorities, organisers and performers in better understanding the legal obligations put upon them in the current legislative framework, however, the problems outlined in the current system above would still remain.

Option 3. Revising subordinate legislation.

Costs

This option would incur direct costs to the Welsh Government in policy official and lawyer time in consulting on proposals, drafting legislation and drafting guidance. There would be some one-off costs to local authorities in adapting to new requirements for issuing licences but, if the system is made simpler, they should have some ongoing savings from spending less time managing applications. There would also be a saving to applicants in not having to provide medical certificates, which cost between £30 and £63 for each child.

Benefits

Applicants and local authorities benefit from a clearer, simplified legal structure shared by England, as well as, a stronger focus on safeguarding.

There is minimal impact on the following sectors:

- Local government: authorities carry out licensing under the Acts and Regulations so are the first point of contact for applicants. Their processes will need to change under any new legislation and they will have to carry out their safeguarding duties to potentially different frameworks. Other than changeover, there should be no ongoing cost to local government and there should be some positive impact (plus possible savings) from a clearer licensing regime.
- Voluntary sector: when voluntary and community bodies organise performances or other events, they need to understand the licensing conditions or could find themselves breaking the law. Any moves to make the system simpler should help the sector to act more confidently.
- Business sector: many applicants for licenses represent theatres, promoters, broadcasting companies and other businesses. They would benefit from clearer rules and from comparability with other UK nations, as most do not only operate in Wales.

Impact Assessments or screenings have been carried out on the following areas:
Children's rights; Equality; Welsh language; Health; Privacy; Rural issues

These did not raise any specific issues. The main impact raised was for children aged 16 or under and their parents, who would benefit from a clearer process and the removal of the automatic requirement for, and cost of, a medical certificate.

Impact Assessments were not considered necessary or appropriate in the following areas and so were not carried out:

Bio-diversity, Sustainable Development, Climate Change; Strategic Environmental Impact, Environmental Impact, Habitat Regulations; Poverty, Communities First, Economic, Justice

Although there is some potential for economic impact on the entertainment and broadcasting industries in Wales, these costs are difficult to assess and are unlikely to be clear to the industries themselves, given that they are based on possible lost opportunities rather than clear additional costs.

Following the responses to the consultations, the preferred option was deemed to be option 3 – draft new Regulations and new guidance to support applicants, local authorities and other involved parties. Whilst not cost neutral, this option offers a response to those who felt the current system was out of date and allowed the involvement of a number of stakeholders in both consultation and engagement activities to prepare effective guidance for the wider sector.

8. CONSULTATION

Consultation 2012

From 24 May to 3 August 2012, the Welsh Government held a joint public consultation with the UK Government's Department for Education on proposals for reform of the of the regulatory system for children taking part in performances and activities.

In total, 232 responses were received, with 31 responses from Welsh stakeholders. Responses were divided on many of the consultation proposals, particularly where they perceived that the proposals affected the balance between allowing children to take up opportunities to perform and safeguarding them from unnecessary risk.

The consultation identified some barriers that might prevent children from performing, which served little purpose. Subsequently, these anomalies were removed in part by the Children and Families Act 2014.

On 21 January 2014, a Legislative Consent Motion on the Children and Families Bill in relation to section 38 of the Children and Young Persons Act 1963 (restriction on licences for performances by children under 14) was approved by the National Assembly. This removed a restriction on the types of performance that children under the age of 14 could be licenced to take part in.

Requirement for a medical certificate

The 2012 consultation also sought views on the need to continue with the requirement for a medical certificate to be provided before a licence could be granted for a child to take part in a performance. The certificate would need to show that the child was fit to perform and that his or her health would not suffer by reason of taking part in such performances.

The results of consultation demonstrated overwhelming evidence that the requirement should be removed because it did not contribute to effective safeguarding and often caused delays in processing licences. Removal would also provide greater equality of opportunity since the charge levied for a certificate was prohibitive to low income families. As a result, these new regulations will remove this requirement.

The consultation and the summary of responses are available on the Welsh Government's website at:

<http://gov.wales/consultations/education/safeguardingchildren/?lang=en>

Consultation 2014

From 1 August to 31 October 2014, the Welsh Government held a further public consultation concerning the limits set out in the 1968 Regulations, namely, the limits on when children of different ages could attend and take part in performances and the breaks they must have. The consultation proposed to replace the complex rules, which differ between broadcast and non-broadcast performances, with a streamlined set of rules that apply equally to both broadcast and non-broadcast performances. A similar exercise was undertaken by the UK Government about arrangements which would apply in England.

The consultation also sought to strengthen the role of the (local authority approved) chaperone and signalled our intention to remove the current requirement for a medical certificate to be provided before a licence could be issued. This was consistent with the approach adopted by the UK Government.

The rationale behind the proposed changes is to maximise opportunities for children to take part in all kinds of performances and paid sport and modelling activities without reducing the protections provided by the existing legislative framework and ensuring current levels of safeguarding.

There were 21 responses to the consultation, all of which welcomed a revision to the current system and broadly agreed to the draft proposals.

Age Groups

There were some specific issues raised which were also reflected in the UK Government consultation, such as the difference in the proposals for 0-2 year olds and 2-4 year olds being unhelpful. These views have been considered and were reflected in more simplified age groupings consolidating both age groups to 0-4 year olds.

Travel Time

The current limits for the earliest time that a child can be present at a place of performance or rehearsal vary from 7am to 10am depending on the type of performance and age of the child. The latest time limit for being present at the place of performance or rehearsal varies from 4.30pm to 10.30pm.

During the consultation, our proposal to simplify those limits, so that the earliest time would be 7am for all age groups and the latest time would be 10pm for under fives and 11pm for fives and over, was met with concern that the time taken to travel to and from the venue would not be taken into account by the local authority.

We have therefore added a requirement in the regulations that travel time should be considered by the local authority when giving approval, and any conditions deemed necessary may be imposed on the licence to ensure that the time limits are manageable for each child.

The outcome of consultation showed that stakeholders on the whole supported the introduction of new regulations in Wales, and that unless there were sound reasons to the contrary these should be broadly consistent with regulations introduced by the UK Government in England.

Consistent cross-border arrangements would also ensure that there was no potential disadvantage to child performers in Wales if arrangements in England were perceived as less restrictive. It would also prevent any possible economic disadvantage if broadcast companies judged that arrangements in England were less bureaucratic putting Wales at a disadvantage in being considered as a location for film or television productions.

Supporting guidance will help the licensing authority in assessing whether to allow it in any particular case. They will have discretion to place conditions on the licence as they deem necessary to ensure that the child is not over-worked and has sufficient breaks.

The full consultation document and a summary of responses can be found on the Welsh Government website on the following link:

<http://gov.wales/consultations/education/when-children-can-take-part-in-performances-and-the-breaks-they-mush-have/?status=closed&lang=en>

Further engagement

Workshops to comment on non-statutory guidance

To support the introduction of regulations, the Welsh Government will publish non-statutory guidance to clarify changes in the legislation. This will replace the current guidance that was issued by the Home Office in 1968.

Workshops were held on 10 and 17 September 2015 inviting all those who responded to the consultation to comment on, and contribute to, a draft version of this guidance. Delegates from local authorities and the performing sector, attended the workshops and suggested amendments which helped steer the direction of the guidance.

Launch events & development of good practice guidance

We will ensure the changes are communicated to all local authorities and to the performing sector. Launch workshop events will also be held to explain the impact of the regulations and to clarify the changes.

The launch events will also include a workshop to inform the development of additional good practice guidance for child performance licencing in Wales. This will complement the accompanying guidance by including case studies outlining examples of good practice from across Wales. It is intended that this will be produced in conduction with key stakeholders in local authorities and the sector.

9. COMPETITION ASSESSMENT

There are no competition issues related to this policy. It applies to any person or body organising performances or activities in Wales and to children normally living in Wales. There are no major differences between Welsh, English and Scottish Regulations on this matter that would put Welsh organisers or Welsh children at a competitive disadvantage to English and Scottish organisers and children.

10. POST IMPLEMENTATION REVIEW

Formal reviews are not currently planned. However, there is close contact with the local authority teams that issue licences and we will continue to monitor the impact of the new Regulations.